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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

RICHARD HARIG, Plaintiff and Appellant, v. ASBESTOS CORP. LIMITED et al., Defendants; FIREMAN'S FUND INSURANCE COMPANY, Intervener and Respondent. [And nine other cases.*]	A149972 (San Francisco City & County Super. Ct. No. CGC-13-276181)

In these 10 cases (consolidated on appeal), plaintiffs challenge orders granting motions by Fireman's Fund Insurance Company (Fireman's Fund) to vacate defaults and default judgments against its former insured, defendant Associated Insulation of California (Associated). Given the unusual circumstances, we conclude there was no "clear showing of abuse of discretion" by the trial court in granting the motions. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 (*Weitz*.) We therefore affirm the challenged orders.[1]

* Robert James Hanson v. Sequoia, Ventures Inc. et al. (No. CGC-10-275624); John Johnston v. Asbestos Defendants (No. CGC-08-274950); Sandra Liberty v. Lamons Gasket Company et al. (No. CGC-11-275871); Richard Lujan et al. v. Asbestos Defendants (No. CGC-10-275496); Milton Turner et al. v. Asbestos Defendants (No. CGC-09-27245); Gary Kase et al. v. Thomas Dee Engineering Co. (No. CGC-11-

BACKGROUND

In their combined opening brief, plaintiffs assert "all facts and evidence in these cases are identical—other than the dates of the defaults and default judgments and the dates the motions to set aside were filed." Thus, their brief references and cites to only the record in the lead case, *Harig*. We therefore do the same.

Plaintiffs filed their complaint in *Harig* on August 23, 2013. They named numerous defendants, including Associated Insulation, and alleged exposure to asbestos-containing products and subsequent manifestation of asbestos-related injuries. Four months later, on December 20, plaintiffs obtained entry of Associated's default.

Over the course of the next several years, numerous defendants appeared and answered, and the parties subsequently litigated trial preference, evidentiary issues and bifurcation of limitations defenses.

It was not until after trial was set and continued several times, and plaintiffs reached settlements with and/or dismissed the other named defendants, that plaintiffs, on September 10, 2015, moved for entry of a default judgment against Associated. Three months later, following a prove-up hearing, the court entered judgment against Associated on December 29.

Within less than two months, in February 2016, Fireman's Fund retained counsel to defend Associated. As of March 6, Associated Insulation's corporate status was

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275958); Michael Kell v. General Electric Co. et al. (No. CGC-09-275245); Frances Murphy et al. v. Asbestos Defendants (No. CGC-08-274695); Edward L. Lee v. Thomas Dee Engineering Co. (No. CGC-11-275898).

[1] Appeals from orders vacating defaults and default judgments in nine other cases involving Fireman's Fund and Associated have been filed in this appellate district, spread among three divisions. (*Mechling v. Asbestos Defendants* (2018) 29 Cal.App.5th 1241(*Mechling*) [affirming orders in four cases]; *Londene v. Associated Insulation of California Inc.* (Cal.App. 1 Dist., Feb. 1, 2019, Nos. A149605, A149607, A149610, A149612) [nonpub. opn.] 2019 WL 409514 [affirming orders in four cases]; *O'Balle v. Fireman's Fund Insurance Company* (Cal.App. 1 Dist., Feb. 19, 2019, No. A151530) [nonpub. opn.] 2019 WL 668663 [vacating order and remanding in one case].)

suspended. The record does not indicate when Associated's corporate status was first suspended.

Within six months of the default judgment in *Harig* (and in five of the other cases before us[2]) Fireman's Fund, in June 2016, intervened and moved to set aside the default(s) and default judgment(s), pursuant to both Code of Civil Procedure section 473, subdivision (b) and the court's inherent equitable power. (See *Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196, 2015 (*Western Heritage Ins. Co.*) [insurers are permitted to intervene when a third party has obtained a default against its insured].)[3] In July, Fireman's Fund filed motions to set aside the defaults and default judgments in the four other cases before us,[4] relying solely on the court's inherent equitable power. We discuss the points made in the moving and opposing papers in more detail in the next section of this opinion.

Indicating it had heard a wave of motions by Fireman's to vacate defaults and default judgments against Associated in asbestos cases, the trial court granted the motions, stating it believed Fireman's was proceeding as it was legally entitled to do, and as it should do.

DISCUSSION

Plaintiffs' principle contention on appeal is that Fireman's Fund did not make a sufficient evidentiary showing in support of its motion(s) to vacate and thus failed to

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[2] *Hanson v. Sequoa Ventures Inc. et al*. (A150119), *Liberty v. Lamons Gasket Company et al.* (A150126), *Johnston v. Asbestos Defendants* (A150124), *Lujan v. Asbestos Defendants* (A150129), and *Turner v. Asbestos Defendants* (A150130).

[3] An intervening insurer is "not limited to those defenses to which its insured might be restricted due to the procedural default. The entire purpose of the intervention is to permit the insurer to pursue its own interests, which necessarily include the litigation of defenses its insured is procedurally barred from pursuing." (*Western Heritage Ins. Co., supra,* 199 Cal.App.4th at p. 1208.)

[4] *Kase v. Thomas Dee Engineering Co*. (A150201), *Kell v. General Electric Co. et al.* (A150202), *Murphy v. Asbestos Defendants* (A150204), and *Lee v. Thomas Dee Engineering Co.* (A150205).

meet "the stringent three-prong test" the Supreme Court endorsed in *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982 (*Rappleyea*).[5]

We therefore start with a discussion of *Rappleyea*, in which the high court reversed an order denying a motion to vacate a default entered against two Arizona residents.

After being served with the complaint, the defendants in *Rappleyea* did not retain counsel, but informally sought help from an Arizona attorney who was an "old friend." (*Rappleyea, supra*, 8 Cal.4th at p. 978.) The attorney called the superior court's clerk's office to find out the filing fee for an answer and was incorrectly told the amount for one defendant ($89), rather than for two defendants ($159). Accordingly, despite being timely received by the clerk's office, the defendants' answer was returned for an insufficient fee, a problem the defendants promptly corrected. (*Ibid*.) In the meantime, the plaintiff procured their default. The "record" was "murky" as to the subsequent "course of events." (*Id.* at p. 979; *ibid*. ["The scanty record shrouds much of the case in mist."].)

Within several months, however, the plaintiff's attorney sent the defendants a letter that seemingly stated they had no recourse with respect to the entry of default. (*Rappleyea*, *supra*, 8 Cal.4th at pp. 979–980.)

A number of months later, the defendants learned the plaintiff intended to procure a default judgment, and at that point, they moved to set aside the entry of default. (*Rappleyea*, *supra*, 8 Cal.4th at p. 980.) The trial court denied the motion. (*Ibid.*)

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[5] Our standard of review is well-established. "A motion to set aside a default judgment is addressed to the sound discretion of the trial court, and, in the absence of a clear showing of abuse of discretion where the trial court grants the motion, the appellate court will not disturb the order." (*Weitz, supra*, 63 Cal.2d at p. 854.) We are further "obliged to uphold that discretionary ruling, 'if . . . correct on any basis, regardless of whether such basis was actually invoked.' " (*Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 98 [affirming order granting motion to vacate default judgment on equitable ground of extrinsic mistake].)

In the meantime, the plaintiff had been lumbering along in his effort to obtain a default judgment and finally succeeded in obtaining a $200,000-plus judgment a month after the court denied the defendants' motion to vacate. (*Rappleyea, supra*, 8 Cal.4th at pp. 978, 980.)

A divided Court of Appeal affirmed, allowing the default judgment to stand. (*Rappleyea, supra*, 8 Cal.4th at p. 980.)

The Supreme Court granted review. The court first confirmed that, even after the period for seeking statutory relief from a default has passed, a trial court may vacate a default on equitable grounds, one such ground being "extrinsic mistake—a term broadly applied when circumstances extrinsic to the litigation have unfairly cost a party a hearing on the merits." (*Rappleyea, supra*, 8 Cal.4th at p. 981.)

The high court next observed that there is a distinction between seeking relief from a clerk's entry of default and seeking relief from a default judgment. "When a default *judgment* has been obtained, equitable relief may be given only in exceptional circumstances. '[W]hen relief under [Code of Civil Procedure] section 473 is available, there is a strong public policy in favor of granting relief and allowing the requesting party his or her day in court. Beyond this period there is a strong public policy in favor of the finality of judgments and only in exceptional circumstances should relief be granted.' " (*Rappleyea, supra*, 8 Cal.4th at pp. 981–982, quoting *In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1071 (*Stevenot*).)

"Apparently to further the foregoing policy [pertaining to vacating default judgments after the statutory time period has expired], one appellate court," explained the Supreme Court, had "created a stringent test to qualify for equitable relief from default on the basis of extrinsic mistake." (*Rappleyea, supra*, 8 Cal.4th at p. 982.) Under that test, " '[t]o set aside a judgment based upon extrinsic mistake one must satisfy three elements. First, the defaulted party must demonstrate that it has a meritorious case. Second[ ], the party seeking to set aside the default must articulate a satisfactory excuse for not presenting a defense to the original action. Last[ ], the moving party must demonstrate

diligence in seeking to set aside the default once . . . discovered.' " (*Id.* at p. 982, italics omitted, quoting *Stiles v. Wallis* (1983) 147 Cal.App.3d 1143, 1147–1148 (*Stiles*).)

Because the court had before it only the defendants' appeal from the clerk's entry of default, this "stringent test" was technically not applicable. Nor did the court need to decide, and it did not decide, whether the three-part "stringent test" articulated in *Stiles* was tantamont to the approach taken by the Court of Appeal in *Stevenot.* (*Rappleyea, supra,* 8 Cal.4th at p. 982.) Even under this "stringent three-prong test," said the high court, the "odd facts" of the case before it entitled the defendants to relief. (*Ibid.*)

The court then examined "whether defendants [had] a satisfactory excuse for failing to timely answer." (*Rappleyea, supra,* 8 Cal.4th at p. 982.) Pointing to the fact the defendants' answer had not been timely filed because the court clerk had miscommunicated the filing fee, the court had no difficulty concluding the defendants had a satisfactory excuse for not having timely filed their answer. (*Id.* at pp. 982–983.)

The court next considered whether "the defense has merit." The court observed that "[o]rdinarily a verified answer" suffices in this regard. (*Rappleyea, supra,* 8 Cal.4th at p. 983.) However, the plaintiff's complaint had not been verified. Nor, as would be expected, was the defendants' proffered answer verified. The defendants had, however, responded to each allegation, and the attorney friend who had informally assisted them declared he "believed" the defendants had a "very good (and certainly a justiciable) defense." (*Id.* at p. 983.) This, said the court, "sufficiently" showed merit. (*Ibid.*)

Turning to the third consideration—whether the defendants had acted diligently "to set aside the default once discovered"—the court observed that the degree to which the plaintiff is prejudiced is a significant consideration, and the greater the prejudice, the less generous the court can be in granting relief. (*Rappleyea, supra,* 8 Cal.4th at pp. 983–984.) The court acknowledged that in the case before it, more than a year passed between the entry of the defendants' default and their motion to vacate, and in the meantime, the plaintiff had procured a default judgment. (*Id.* at p. 984.) Nevertheless, given the "unusual facts" of the case, including the plaintiff's own delay in procuring a default judgment, the defendants were subject to a "reduced standard" as to diligence. The

defendants had not, said the court, been "callously derelict in seeking to set aside the default." (*Ibid.*)

Plaintiffs maintain *Rappleyea* compels the conclusion the trial court manifestly abused its discretion here in granting Fireman's motion(s) to vacate because the Supreme Court therein endorsed a "stringent" test and Fireman's assertedly did not come close to making the showing required under that test.

We first observe that *Rappleyea* did not require a Herculean evidentiary showing. The only pertinent evidence the court considered was that the court clerk told defendants (through their lawyer friend) the wrong filing fee, defendants tried to file an unverified answer that "respond[ed]" to the allegations of the unverified complaint and their lawyer friend "believed" defendants had a "very good (and certainly a justiciable) defense" (*Rappleyea, supra*, 8 Cal.4th at p. 983), the plaintiff's attorney sent a letter to defendants that could reasonably be read to state they had no ability to challenge the default, defendants moved to vacate their default when plaintiff indicated he intended to obtain a default judgment, and the plaintiff, himself, delayed in procuring a default judgment. Thus, the showing that precipitated the Supreme Court's *reversal* of the *denial* of the motion to vacate in *Rappleyea* can scarcely be called overly weighty and, in part, the pertinent facts appeared in the trial court's own record of actions.

We next observe that what seemed of considerable significance to the high court was the unusual nature of the circumstances that occurred, leading the court to state at the conclusion of its opinion: "We draw our conclusion narrowly. The clerk's error and plaintiff's incorrect statement of the law together persuade us that the court abused its discretion when it denied defendants' motion. These rare events should not combine to make defendants suffer a $200,240.39 judgment without a hearing on the merits." (*Rappleyea, supra*, 8 Cal.4th at p. 984.)

While the consolidated cases before us do not involve harmonic convergence of the same "rare events" that occurred in *Rappleyea*, the cases at hand are nevertheless not close to being the typical default case.

First, Associated is one of many defendants from whom numerous plaintiffs have sought damages for asbestos injuries from exposures that occurred decades ago. It is common knowledge that some asbestos defendants are no longer in business. Accordingly, as the procedural history of *Harig* illustrates (and as the court's register of actions chronicles), these cases generally proceed against the extant defendants, the parties litigate significant pretrial issues, and as the case gets closer to trial, the parties become serious about settlement and, eventually, most of the defendants are dismissed pursuant to settlements. Thus, in *Harig*, two years passed before plaintiffs sought a default judgment against Associated. In the meantime, many other defendants answered, the parties litigated a variety of issues, a trial date was set and then continued a number of times, and finally settlements were reached and these defendants were dismissed. Plaintiffs then proceeded with a prove up hearing and procured a default judgment against Associated.

Second, the moving party in these cases was not the defaulted defendant. Rather, the moving party was a former insurer of Associated. As we have indicated, an insurer, to protect its own interests, is legally entitled to intervene and move to vacate a default suffered by its insured. (See *Western Heritage Ins. Co.*, *supra*, 199 Cal.App.4th at pp. 1206–1207.) Thus, while in the usual default case the focus is on the defendant's own derelictions, there are other considerations where an insurer exercises its legal right to intervene and moves to vacate a default judgment against its insured. (*Id.* at p. 1206–1208, 1210.)

With these comments, we turn to the three-part test the Supreme Court applied in *Rappleyea*—(1) whether the defendant has a "satisfactory excuse for failing to timely answer" (*Rappleyea*, *supra*, 8 Cal.4th at p. 982), (2) whether "the defense has merit" (*id.* at p. 983), and (3) whether the defendant acted diligently "to set aside the default once discovered" (*ibid*). While these are relatively straightforward inquiries when a defendant moves to vacate a default judgment, they are not so readily applied when an intervening insurer of a defaulted defendant moves to vacate the judgment. (See *Mechling*, *supra*, 29 Cal.App.5th at p. 1246, fn. 3.) Rather, as the plaintiffs appeared to acknowledge at

oral argument, the inquiries that are pertinent to an insurer moving to vacate a default judgment against its insured are (1) whether the insurer acted with reasonable diligence on learning there is a basis for it to take action in the case, (2) whether a defense "has merit," and (3) the degree to which the plaintiff will suffer prejudice. We therefore turn our attention to these three questions.

Insurer's reasonable diligence. Fireman's submitted a single declaration by its lawyer, dated June 28, 2016, in support of its motion to vacate the default judgment against Associated in *Harig*. Counsel declared in pertinent part: "I am informed and believe that Fireman's Fund issued a liability insurance policy(ies) to Associated Insulation. That policy appears to provide Associated Insulation with insurance for the asbestos claims filed against Associated Insulation in this case. [¶] . . . It was in February of 2016 that Fireman's Fund first retained counsel to defend any asbestos claims made against Associated Insulation, and thereafter Fireman's Fund made its first appearance in this case. [¶] . . . [¶] . . . Based upon information and belief, Associated Insulation's corporate status has been suspended by the California Secretary of State and the California Franchise Tax Board." Attached to the declaration was a printout, dated March 6, 2016, of the Secretary of State's web site. (Capitalization omitted.)

Plaintiffs argued in the trial court, and continue to maintain on appeal, that this declaration did not come close to satisfying the "stringent test" for equitably vacating a default judgment. In fact, in the trial court, plaintiff's counsel asserted this declaration was tantamount to "no" showing in support of an equitable motion to vacate.

While it is certainly fair to characterize Fireman's Fund's declaration as highly truncated, plaintiffs overlook an important point in assessing the sufficiency of the showing before the trial court.

In addition to what is actually stated in a declaration, all reasonable inferences to be drawn therefrom are equally important. (See *Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 851 (*Phillips*) [a finding based on a reasonable inference will not be set aside " 'unless it appears that the inference was wholly irreconcilable with the evidence' "]; *Jonkey v. Carignan Construction Co.* (2006) 139 Cal.App.4th 20, 24 [in

reviewing the sufficiency of the evidence to support a judgment, the court must consider all of the evidence and draw every reasonable inference and resolve every conflict to support the judgment].) " 'Even in cases where the evidence is undisputed or uncontradicted, if two or more inferences can reasonably be drawn from the evidence,' " an appellate court cannot substitute its own inferences, but must " 'accept as true all evidence and reasonable inferences from the evidence tending to establish the correctness of the trial court's findings and decision.' "[6] (*Jonkey*, at p. 24.)

Accordingly, as we see it, the pivotal question is what can reasonably be inferred from Fireman's Fund's declaration. Specifically, is it reasonable to infer that Fireman's Fund acted with reasonable diligence upon learning there was a basis for it to take some action in the case?

We conclude that such an inference can reasonably be drawn—*because* of the well-established, and long-established law governing an insurer's duty to defend its insured. "The defense duty is a continuing one, arising on tender of defense and lasting until the underlying lawsuit is concluded [citation], or until it has been shown that there is *no* potential for coverage." (*Montrose Chemical Corp. v. Superior Court* (1993) 6 Cal.4th 287, 295.) This duty arises *immediately* upon the insurer being apprised that the lawsuit against its insured potentially seeks damages within the coverage of the policy. (*Id.* at p. 295 ["Imposition of an immediate duty to defend is necessary to afford the insured what it is entitled to: full protection of a defense on its behalf."].) "Hence, once the insured establishes the potential of coverage, the insurer *must* defend the suit unless it conclusively refutes such potential." (*County of San Bernardino v. Pacific Indemnity Co.* (1997) 56 Cal.App.4th 666, 680, italics added.)

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[6] Because this is *not* a summary judgment, but rather is an order reviewed under the abuse of discretion standard, we do *not* focus on the evidence and inferences favoring the opposing party. (Compare, e.g., *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) Rather, we draw all reasonable inferences in favor of the trial court's ruling. (See *Phillips, supra*, 2 Cal.App.5th at p. 851.)

Given the absolute clarity of the law as to when an insurer must act—immediately upon learning that a lawsuit against its insured potentially involves covered claims—it is not unreasonable to infer that Fireman's Fund learned that it owed a duty to defend Associated only shortly before it hired defense counsel in February 2016. Were the law not crystal clear in this regard, we would agree with plaintiffs that such an inference would be based on nothing more than " ' "suspicion, imagination, speculation, surmise, conjecture or guesswork." ' " (*Shandralina G. v. Homonchuk* (2007) 147 Cal.App.4th 395, 411, quoting *Western Digital Corp. v. Superior Court* (1998) 60 Cal.App.4th 1471, 1487.) However, the law is crystal clear and has been so for more than three decades. Accordingly, in the absence of even the faintest suggestion that Fireman's Fund failed to heed its legal duty, it is not unreasonable to infer that Fireman's Fund retained defense counsel in accordance with its legal obligations to do so, i.e., immediately on being apprised that its former insured was being sued for damages as to which there was potential coverage under a policy once issued to the insured.[7]

Whether defense has merit. Fireman's Fund did not file a proposed answer with its motion to vacate the default judgment. Plaintiffs maintain it was an absolute prerequisite for Fireman's Fund to have done so, citing to *Rappleyea* and several other cases in which defendants proffered proposed answers.

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[7] We note the record in *Harig* does not include the March 2012 letter referenced in *Mechling*, which the plaintiffs therein submitted in opposition to Fireman's Fund's motion to vacate. (*Mechling, supra*, 29 Cal.App.5th at p. 1245.) Apparently, Fireman's Fund sent this letter in response to a letter from plaintiffs' counsel giving notice of a number of lawsuits and asking for coverage of claims against Associated. Fireman's Fund responded that it had searched for, but had not located, any policy that provided coverage for the claims asserted in the identified lawsuits. The *Harig* plaintiffs did not file their lawsuit against Associated until more than a year and a half later, in September 2013. Even if this letter was in the *Harig* record, it would not compel an inference that Fireman's Fund was being untruthful at that time in stating it had looked for, but had not located, a policy that provided coverage. As the *Mechling* court pointed out, in the letter, Fireman's Fund invited the plaintiffs to provide any information it had issued a policy to Associated that afforded coverage, but plaintiffs apparently never responded. (*Id.* at pp. 1245, 1248.)

The Supreme Court did not, however, state that a proffered pleading was a mandatory prerequisite to equitable relief. (*Rappleyea, supra*, 8 Cal.4th at p. 983.) Rather, the court concluded the defendants' proffered unverified answer and the generic assertion of the defendants' lawyer friend who had informally assisted them, was a "sufficient[]" showing of merit. (*Ibid.*)

Given the unusual circumstances of the cases before us, we would be turning a blind eye to reality in saying the record here does not "sufficiently" show that Associated has at least some basis to defend against the plaintiffs' asbestos claims. The register of actions in *Harig*, for example, demonstrates that no less than eight answers were filed in the case by named defendants and that the parties spent nearly two years litigating a variety of issues, including evidentiary issues and bifurcation of statute of limitations defenses. As we have observed, asbestos cases are procedurally unique in many ways, and there are now well-established defenses that are routinely asserted in these cases. Furthermore, we are dealing here with motions to vacate made by a defaulted defendant's insurer. While a defendant is likely to know the relevant facts necessary to preparing an answer, the same cannot be said of a defendant's insurer, and particularly a defaulted defendant's insurer, which is obligated to take action immediately on becoming aware that potentially covered claims are being made against its insured. We therefore conclude the record here "sufficiently" reflects Associated, like the other named defendants, could mount a colorable defense. (See *Mechling, supra*, 29 Cal.App.5th at pp. 1247–1248.)

Prejudice to the plaintiffs. On this point, plaintiffs emphasize the importance of "finality" and that vacating a default judgment divests them "of a property right." (*Rappleyea, supra*, 8 Cal.4th at p. 984.)

However, the Supreme Court's discussion in *Rappleyea* was more nuanced than plaintiffs suggest. To begin with, the court made clear that when a motion to vacate is brought within the six-month statutory time period set forth in Code of Civil Procedure section 473, the law "favors disposing of cases on their merits." (*Rappleyea, supra*, 8 Cal.4th at p. 980.) In *Harig*, and in five of the other cases before us, Fireman's Fund moved to vacate the default judgments against Associated within this time frame. In the

other four cases, Fireman's Fund moved to set aside the default judgments within less than 30 days thereafter. Under these circumstances, there is considerable weight to the policy of deciding cases on their merits.

In addition, the high court pointed out that the plaintiff in *Rappleyea* had, himself, not proceeded with dispatch in procuring a default judgment. (*Rappleyea, supra*, 8 Cal.4th at p. 984.) This "indifference" in moving against the defendants "beli[ed] any claim plaintiff might make of eagerness to obtain an early judgment." (*Ibid.*) The plaintiff also had incorrectly indicated to the defendants that they had no recourse as to the entry of default. "These unusual facts greatly weaken[ed] any possible assertion of prejudice, and correspondingly lower[ed] the burden on defendants of showing diligence." (*Ibid.*) And under this "reduced standard," the "defendants were not callously derelict in seeking to set aside the default." (*Ibid.*)

A record of similar "indifference" to procuring default judgments against Associated exists here. In *Harig*, for example, plaintiffs waited for two years before seeking a default judgment against Associated. In the meantime, they litigated their claims against the answering defendants and ultimately settled with and/or dismissed these defendants. Certainly, plaintiffs, themselves, did not, unlike the plaintiff in *Rappleyea*, contribute to the lapse of time before Fireman's Fund intervened in these cases and moved to vacate the default judgments against Associated. However, the fact plaintiffs took no action to procure a default judgment against Associated until they fully prosecuted their claims against the many defendants who answered, does indicate they were not eager "to obtain an early judgment" against Associated. (*Rappleyea, supra*, 8 Cal.4th at p. 984.) Accordingly, as in *Rappleyea*, the "unusual facts" of *Harig* and the other asbestos cases before us, "weaken" plaintiffs' assertion of prejudice.

In sum, given that Fireman's Fund's moved to vacate the default judgments against Associated within the six-month statutory period, or shortly thereafter, and that plaintiffs, themselves, waited several years before obtaining default judgments against Associated, plaintiffs have not demonstrated sufficient prejudice to counterbalance the policy favoring disposition of the cases on their merits. (See *Weitz, supra*, 63 Cal.2d at

pp. 857–858 [where plaintiff made no showing of prejudice and where, considering all the circumstances, the defendant did not act unreasonably in moving to vacate default judgment beyond the statutory time period, "it was not unreasonable for the trial court to have resolved any doubt it may have had in favor of permitting an adjudication on the merits"]; *Mechling, supra,* 29 Cal.App.5th at pp. 1248–1249 [trial court did not abuse its discretion in weighing the reasonableness of the insurer's conduct in moving to vacate default judgments].)

We thus share the view our colleagues expressed in *Mechling*—that, in toto, these asbestos cases involve "exceptional circumstances" justifying the trial court's grant of Fireman's Fund's motions to vacate the default judgments against its insured, Associated Insulation.

DISPOSITION

The orders setting aside the defaults and default judgments are affirmed. Fireman's Fund is entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

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Banke, J.

We concur:

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Margulies, Acting P.J.

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Sanchez, J.

A149972, *Harig v. Fireman's Fund Insurance et al.*